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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Note verbale dated 26 February 1993 from the Permanent Representative of Myanmar to the United Nations Office at Geneva addressed to the Secretary-General

The Permanent Representative of the Union of Myanmar to the United Nations Office and other International Organizations at Geneva presents his compliments to the Secretary-General of the United Nations and with reference to agenda item 12 of the forty-ninth session of the Commission on Human Rights, has the honour to enclose herewith, rebuttals of certain paragraphs contained in the report of the Special Rapporteur of the Commission on Human Rights on the situation in Myanmar, Mr. Yozo Yokcta, contained in document No E/CN.4/1993/37.

The Permanent Representative of the Union of Myanmar would deeply appreciate it if the above-mentioned rebuttals of the paragraphs contained in the report could kindly be issued as an official document of the Commission under the agenda item referred to above.

GE.93-11449

Rebuttals of the Allegations made in the Report on the situation of human rights in Myanmar by Professor Yozo Yokota (E/CN.4/1993/37)

In paragraph 15

The Report incorrectly states that "in 1974, a new Constitution was drafted. However, one-party rule continued".

In fact, the new Constitution of 1974 was adopted by a nation-wide referendum on 3 January 1974.

Article 11 of the Constitution of 1974 expressly states that: "The State shall adopt a single party system".

In paragraphs 18,19,20

The Report alleges that during the 1988 disturbances, students and workers who demonstrated were attacked by the military.

It may be pointed out that during the 1988 disturbances, the military was compelled to step in to maintain law and order. What really happened was the pro-democracy demonstrations were peaceful and orderly at the beginning. However, owing to the incitement by extreme leftists, miscreants and by certain quarters of the foreign media, total anarchy and lawlessness became prevalent. The army was compelled to step in to quell the violent and malicious mob. Maximum restraint was exercised by the security forces. What had occurred during the disturbances was reported to the Centre for Human Rights by Mission's Note No.203/3-27/23 of 17 July 1989.

In paragraph 25

The Report incorrectly states that Daw Aung San Suu Kyi was banned from campaigning on the grounds that she maintained unlawful association with insurgent organizations.

In point of fact, Daw Aung San Suu Kyi was not eligible to stand for elections held in 1990 under Section 10, sub-section (e) of the Pyithu Hluttaw Election Law which stipulates:-

The following persons shall not be entitled to stand for elections:-

> persons who are under any acknowledgement of allegiance or adherence to a foreign Power, or are subjects or citizens or entitled to the rights and privileges of a subject or a citizen of a foreign power.

The principle was originally proposed by her father General Aung San himself.

In paragraph 28

The Report is incorrect in stating that "The State Law and Order Restoration Council set up an Election Commission to scrutinize ..... etc".

In fact, the Elections Commission was set up by the previous government of the then ruling Burma Socialist Programme Party. The independent Commission consisting of five retired senior-most civil servants was entrusted with the holding of the Multi-party General Elections.

In paragraph 31

The Report mentions about the so-called "mass exodus" to Bangladesh. The Report fails to acknowledge the real reasons that caused the "mass exodus".

In the very first place, the Myanmar Muslim people living in the Myanmar-Bangladesh border area were incited by terrorist organizations to cross over to the other side. The same organizations are largely responsible for the fear instilled in the residents who wish to come back to Myanmar. It is these terrorist groups who are not only browbeating but using strong arm tactics against the residents and then hampering the flow of returnees to Myanmar.

The figure of those who crossed over to Bangladesh was reported to be 250,000 in the Report. This figure of 250,000 is a highly inflated figure. As far as Myanmar is concerned, Myanmar will accept those persons who can establish themselves that they have resided in Myanmar for a reasonable period of time.

In paragraph 34

With reference to paragraph 30, Myanmar would like to state that the National Convention which is presently in session is attended by delegates representing political parties, representatives elected at the elections, representatives of national races, peasants, workers, the intelligentsia, technocrats, state service personnel, and invited personages.

In paragraph 36

By quoting the words said to be made by "the Government authority", the Report implies that Myanmar did not want the democracy movement. What "the Government authority" meant was that Myanmar did not want to witness an anarchic situation that occurred in 1988 and that Myanmar would like to avoid repeating the same mistake.

In paragraph 38

"The Government authority" has been quoted totally out of context and the paragraph contains gross errors bordering on absurdity.

In paragraph 41

"The Government authority" has again been misquoted. The substance of the whole paragraph borders on absurdity.

In paragraph 72

In paragraph 68, the Report by implication has cast doubt on the good-will gesture of the Government extended to the armed terrorists by suspending offensive military operations in the Kayin State and other parts of the country in order to consolidate national solidarity and unity. However, taking advantage of this goodwill gesture, certain armed terrorists attacked some military outposts in July and September of 1992. In response to the forays made by the armed terrorists the Myanmar armed forces took counter-offensives in self-defense. The Report is based on hearsay and alleges that summary executions were made by the Myanmar army of people suspected of insurgency. These allegations are totally unfounded.

In similar fashion, the Report has made allegations based on " stories" perpetrated by a person or two.

In paragraph 76

The Report refers to a so-called "relocation order". Its authors do not care to check with the Myanmar authorities whether this so-called order is authentic or not. They accepted the accusation made by a party which apparently is in league with the armed terrorists.

In paragraphs 77 - 78

The Report has made the most sweeping allegations in the most heinous manner. But by their own admission contained in paragraph 74, its authors have pulled the rug from under their feet by admitting that " The Special Rapporteur wishes to point out that his findings are not complete and that the true extent of the problem could not be ascertained during this initial visit".

In this regard, it may be recalled that the Myanmar armed forces, or the Tatmadaw was born out of the national struggle for independence over four decades ago. The Tatmadaw follows the fine tradition of serving the peoples' interest loyally

and faithfully. It is a voluntary army and its highly-disciplined members are pledged to conduct themselves in conformity with the prescribed code of ethnics, enjoining to respect the cultural tradition and customs of the local populace and to establish their image as exemplary. It is not a mercenary army. It takes pride in the fact that it is the people's army.

In paragraphs 79 - 84

Under certain circumstances, the Myanmar armed forces have to employ porters for transportation of equipment over difficult terrain in remote jungles and mountains near the frontier where military campaigns against the armed insurgents are launched. Where the terrain is inaccessible by car or other motorised vehicles the Myanmar army has to employ porters for transport of supplies and equipment.

However, it is not true that porters are treated harshly and inhumanely by the Myanmar armed forces. All these allegations about the treatment of porters by the armed forces are untrue. They mainly emanate from outside sources with ulterior political motives.

Porters are recruited and employed by the armed forces after consultation with local authorities. This has been in practice in Myanmar since she regained her independence in 1948. Recruitment and employment are in accordance with Section 8 Sub-section 1(n) of the Village Act of 1908 and Section 7 Sub-section 1(m) of the Towns Act of 1907. Recruitment is based on the following three criteria:

a) they must be unemployed
b) they must be physically fit to work as porters
c) reasonable amount of wages must be fixed and agreed to beforehand.

Porters thus recruited are never required to accompany the troops to the actual scene of battles; neither are they exposed to danger. They are sent back as soon as their assignment is completed. They are paid equitably and in the unlikely event of a loss of life or limb unconnected with any armed conflict they or their families are compensated in accordance with the Workmen's Compensation Act of 1925. They are entitled to medical treatment like soldiers in accordance with the Armed Forces' Act. They are placed in safe places during operations.

As a matter of fact, there are volunteer porters and professional porters who offer to work as porters on behalf of others to earn their living. So, only the gullible would take it seriously of the vicious slander against the armed forces of Myanmar.

In response to some communications received from the Centre for Human Rights, enquiries were made into alleged ill

treatment of porters in some military command areas. In all these cases investigations revealed that there was no substance in the allegations. The unfounded allegations are completely untenable particularly in view of the high standard of professionalism and discipline of the Myanmar armed forces.

The foregoing paragraph shows that proper enquiries or investigations are made with regard to allegations when there is prima facie evidence.

In paragraph 85-86

Myanmar would like to say that there have been accusations of "forced labour" in Myanmar by some quarters that have been extremely hostile to the Myanmar Government.

Allegations have been made in certain quarters that the Myanmar authorities are using forced labour for the construction of railways, roads and bridges. The allegation is false and is based on fabrications by people who wish to denigrate the image of the Myanmar authorities and those persons who do not understand the tradition and culture of the Myanmar people. In Myanmar, voluntary contribution of labour to build shrines and religious temples, roads, bridges and clearing of obstructions on path-ways is a tradition which goes back to thousands of years. On 8 January 1993, members of the diplomatic corps in Myanmar visited the site of Aungban-Pinlaung railroad construction which the Special Rapporteur mentioned in paragraph 85 of the Report. Contrary to what had been stated, the workers and the populace at the very site welcomed the members of the diplomatic corps most spontaneously and joyously, proving the fact that there is no coercion by the authorities. It is a common belief that the contribution of labour is a noble deed and that the merit attained from it contributes towards a better personal well-being and spiritual strength.

In the villages and in the border areas, Tatmadaw men (The Myanmar Armed Forces) and the local people in the region have been contributing their voluntary labour towards building roads and bridges for the past four years or so. There is no coercion involved. In Myanmar history, there has never been "slave labour". Since the times of the Myanmar kings, many dams, irrigation works, lakes. etc. were built with labour contributed by all the people from the area. Accordingly, those who accuse the Myanmar authorities of using forced labour patently reveal their ignorance of the Myanmar tradition and culture.

In paragraph 87-88

The Report alleges that " thousands of persons had reportedly been summarily executed during the mass demonstrations for democracy in 1988 and during the student strike in December 1990". Attention must be drawn to the qualifying word "reportedly". Its authors are apparently

unaware what really happened during the disturbances which occurred in the latter part of 1988. The pro-democracy demonstrations were peaceful, and orderly at the beginning. However, owing to the incitement by extreme leftists and miscreants and by certain quarters of the foreign mass media, total anarchy and lawlessness became prevalent. The army had to be called out and measures were taken to quell the violent and malicious mob. Maximum restraint was exercised by the security forces. The whole situation was reported to the Centre for Human Rights by the Myanmar Mission's Note No. 203/3-27/23 of 17 July 1989.

In paragraphs 89 - 91

Myanmar has elaborate Rules on the administering of prisons. Under the Prison Act of 1894, which predates Myanmar's independence from the British, there is a ranking of prison officers at every prison with a superintendent at its apex, a medical officer, a medical subordinate and a jailer which forms an administrative unit in the prison. In view of this, it is inconceivable that unnatural deaths in custody could have occurred in prisons. The Permanent Mission has replied to all enquiries addressed to it. If these allegations could be substantiated, the Myanmar authorities are prepared to look into these cases according to established prison rules.

In paragraph 91-96

This paragraph is full of contradictory statements. The fact that the authors had to say the following: " but the information gathered by the Special Rapporteur was insufficient to come to a firm conclusion as to the fate of those women"proves that the allegations were baseless.

In this regard, the Permanent Mission in Geneva, has sent a rebuttal on 15 October 1992 to the Special Rapporteur of the Commission on Human Rights on extra-judicial, summary or arbitrary execution, the copy of which is attached as Annexure.

In paragraph 120

The Report alleges that members of the foreign press were not allowed access to border regions including the Rakhine State. This allegation is false. Members of the foreign press do have access to visit Rakhine State. In fact, several members including a correspondent of the BBC, Mr. Roger Hearing had visited the Rakhine State. Members of the mass media including TV crews from Bangladesh are making visits to the Rakhine State and the homes of the returnees.

It should be mentioned here that members of the foreign press are allowed to visit the Rakhine State provided they can meet their own transportation expenses.

In paragraph 121

It is not true that there is government censorship of the press, radio and television and distribution of written material. The media, however, are required to restrain themselves from making statements which would disrupt public order and tranquillity. There is the Printers' and Publishers' Law in Myanmar and it is certainly not unique to Myanmar.

In paragraph 122

It should be pointed out that members of the Foreign Press numbering some 30 are presently covering the National Convention.

In paragraph 128

The Report contains a sweeping statement which by implication and extension, tries to assert that there was no distinct territory, ethnic and other differences between Myanmar (Burma) and the Indian sub-continent.

In point of fact, Myanmar has existed as a distinct entity, going back thousands of years. The assertion made in the Report is not only inaccurate but also malicious in intent in implying that Myanmar and its people did not exist as a distinct entity before her independence in 1948. There were certainly national borders between Myanmar and India and after 1971, between Myanmar and Bangladesh.

In paragraph 130

The Report yet again, makes another sweeping assertion with regard to Myanmar citizenship and its citizenship laws. Like any sovereign State, Myanmar has its own citizenship laws, rules and regulations. The assertions made in this paragraph show that the authors are not familiar with these laws of the Union of Myanmar.

In paragraph 131

The border inhabitants of Bengali stock living in the Myanmar-Bangladesh border are not Myanmar citizens, according to the Myanmar Citizenship Law even though some of them may be holding National Registration Cards. They have guest status with the right to apply for citizenship.

In paragraph 132

The Report has once again quoted an unsubstantiated assertion that when Myanmar became independent, attempts were made to expel some of the Rakhine Muslim population and that the first flow of refugees took place then. The Report also mentions that " a large exodus " of people took place in 1978.

It is not true that attempts were made to expel some of the Rakhine Muslim population when Myanmar became independent. There was a movement of population across the border in 1978 when checks were made by the Immigration and Manpower department of Myanmar. This operation was made on a nation-wide scale as part of the demographic survey. The project was carried out not only in the Rakhine State, but also covered all other states in the Union. It was not directed against any country or religion. This project caused no problem any where in the whole country but triggered a movement of population across the border involving border inhabitants from Buthidaung and other townships of the Rakhine State. This movement was simply people moving back to where they originally came from. Those who fled across the border were people who did not want to submit themselves to the legitimate scrutiny of the Immigration and Manpower Department.

In paragraph 135

The assertion contained in paragraph 131 is totally false and even dangerous. In Myanmar, there is no repression of any group based on ethnic and racial grounds. The Rakhines are one of the major national races living in Myanmar. Together with the Bamars, Kayins (Karens), Shans, Mons, Chins, Kachins and Kayahs (Karenni), the Rakhines are indigenous races who have lived in Myanmar eons before the commencement of the Christian era. Neither there is repression based on religion. People of Islamic faith enjoy the same rights and privileges as those who profess other faiths like the Christians, the Buddhists and the Hindus.

In paragraph 136

As has been refuted in other relevant paragraphs, there is neither forced relocation nor forced portering as alleged by the Report.

Consequently, the allegations of torture, cruel, inhumane and degrading treatment, etc. against Muslim and other Rakhine ethnic minorities by the Myanmar authorities is false. The thrust of the allegation seems to be an attempt to sow discord, bad blood and enmity among the national races of Myanmar.

In paragraphs 158-165

The Report quotes in extenso, the provisions relating to Article 3 of the Geneva Convention of 1949 and customary law. It may be stated here that Myanmar has consistently fulfilled all its obligations from international treaties to which it is a party. The insinuation to the contrary which the Report seems to imply is very much regretted.

In paragraphs 166-176

Refer to clarifications relating to para.81 above.

In paragraphs 177-179

In the State Constitutions of 1947 and 1974, provisions were clearly spelled out regarding the rights of workers to form associations and organized themselves for protection against economic exploitation. Organizations or Associations permitted by law have the right to enjoy freedom of association, etc.

In the latter part of 1988, disturbances broke out and eventually because of the anarchic situation prevailing in the country, the State Law and Order Restoration Council composed of senior members of Armed Forces took over State power on 18 September 1988 to prevent the country sliding into disintegration. The State Law and Order Restoration Council by force of circumstances had to take over the State power for the following reasons:-

(a) the non-disintegration of the Union
(b) the non-disintegration of national solidarity
(c) ensuring the perpetuity of national sovereignty

From the very beginning the State Law and Order Restoration Council committed itself to retransfer State power to the people in whom it was initially vested, through democratic means within the shortest time possible.

On 27 July 1990 the State Law and Order Restoration Council issued a declaration setting out the programme spelling out the political and constitutional process leading to a new State Constitution based on Multi party democratic principles.

In accordance with this programme, the National Convention is being held at Yangon. The purpose of the National Convention is to lay down basic principles to be elaborated in the new Constitution. Delegates representing political parties, national racial groups, peasants, the intelligentsia, technocrats, State services personnel and workers are taking part in the National Convention. The new Constitution to be drawn up by elected representatives will

be based on Multi-Party Democratic system. Since representatives of workers are participating in the National Convention, provisions for the workers' right to form associations or unions will automatically be provided in the new Constitution.

As pointed out, both the 1947 Constitution and the 1974 Constitution are inoperative pending the adoption of a new Constitution. There is at present no legally recognized or organized body which could be regarded as legal associations or unions for the workers. However, statutory laws, rules and regulations which protect the rights of workers and promote the welfare of the workers are still operating and as such, the fundamental rights and interests of all the workers are protected and maintained by these labour laws, rules and regulations.

In paragraph 220

The assertion contained in paragraph 223 that the Special Rapporteur was not allowed to see any of the political leaders is not true. He met Chairman U Aung Shwe and Secretary U Lwin of the National League for Democracy; Chairman U Khun Tun Oo and Joint General Secretary U Sai Nyunt Lwin of Shan Nationalities League for Democracy on 10 December 1992.

In paragraph 222

The Report, after referring to the ILO Convention 29 and 87, quotes a passage which is derogatory to the interest of Myanmar. It does not name any source.

In paragraph 223

The Report quotes a passage which is contrary to the interest of Myanmar.Here again, it does not name any source.

In paragraph 226

The Report makes a sweeping statement which is tantamount to disparaging the legal system of Myanmar. It is particularly regretted that in doing so, its authors have wittingly or unwittingly attempted to sow serious misunderstanding among the national races of the Union.

It may be pointed out here that these people who profess the Islamic faith and are of Bengali stock living in the Myanmar-Bangladesh border have guest status with the right to apply for citizenship. Accordingly, the sweeping assertion that the law relating to Myanmar citizenship has the effect "to create conditions which promote Statelessness" is highly provocative. And above all, the assertion that the Citizenship

Law would result in " victims of human rights violations may create flows of refugees which overburden other countries and create threats to peace and tranquillity within the region" is totally unwarranted. Myanmar is a peace-loving country and poses no threat to any country or any neighbour.

In paragraphs 231, 232, 233, 234

The Report has made sweeping allegations about torture, suppression of ethnic minorities, religious intolerance based on unsubstantiated reports by dubious sources.

In paragraph 240

The Report in referring to the reopening of universities, institutes of higher education, has slanted the facts in such a way as to give the impression that these institutions had been closed till now. In point of fact, these institutions have been closed down at the end of the academic year and the reopening relates to the new term.